

AMENDED IN ASSEMBLY JUNE 25, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE MAY 6, 2014

SENATE BILL

No. 1283

Introduced by Senator Galgiani

February 21, 2014

An act to amend, repeal, and add Sections 11357.5 and 11375.5 of the Health and Safety Code, and to amend, repeal, and add Section 1210 of the Penal Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1283, as amended, Galgiani. Controlled substances.

(1) Existing law makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, to offer to sell, dispense, distribute, furnish, administer, or give, or to possess for sale, any synthetic stimulant compound or any specified synthetic stimulant derivative, including naphthylpyrovalerone and 2-amino-1-phenyl-1-propanone.

Existing law makes it a misdemeanor to sell, dispense, distribute, furnish, administer, or give, or offer to sell, dispense, distribute, furnish, administer, or give, or possess for sale any synthetic cannabinoid compound or any synthetic cannabinoid derivative.

This bill would also make the use or possession of those specified synthetic stimulant compounds or synthetic stimulant derivatives, or any synthetic cannabinoid compound or any synthetic cannabinoid derivative ~~a crime. The bill would provide that a first offense is punishable as an infraction, a 2nd offense is punishable as an infraction or a misdemeanor, and a 3rd or subsequent offense is punishable as a misdemeanor.~~ *an infraction, punishable by a fine not exceeding \$250.*

By creating new crimes, this bill would impose a state-mandated local program.

The bill would request the Luskin School of Public Affairs at the University of California, Los Angeles, or would require Judicial Council to contract with another entity if the university does not comply with that request, to design an evidence-based education program and treatment model for participation in by individuals convicted of the above-described crimes, as provided. The bill would require Judicial Council to approve the program and treatment model upon a finding that courts can successfully implement the program and education model.

The bill would authorize a defendant, in his or her discretion, to elect to participate in the evidence-based education program and treatment model, if convicted of the above-described crimes, in which case the execution of sentence would be stayed. The bill would specify that upon successful completion of the program, the case against the defendant would be dismissed.

(2) Existing law, the Substance Abuse and Crime Prevention Act of 2000, enacted by Proposition 36 at the November 7, 2000, general election, requires any person convicted of a nonviolent drug possession offense to receive probation. As a condition of probation, a defendant is required to participate in, and complete, an appropriate drug treatment program.

Existing law defines “nonviolent drug possession offense” for purposes of the act to mean the unlawful personal use, possession for personal use, or transportation for personal use of a specified controlled substance, or being under the influence of a controlled substance, as specified.

This bill would additionally define a “nonviolent drug possession offense” to include the ~~misdemeanor~~ use or possession of a synthetic stimulant compound, synthetic stimulant derivative, synthetic cannabinoid compound, or synthetic cannabinoid derivative. By requiring counties to supervise additional persons on probation, this bill would impose a state-mandated local program.

~~The bill would specify that a defendant convicted of any offense described in (1) above who was granted probation and required to participate in a drug treatment program, and who did not successfully complete that drug treatment program, would be presumed eligible for participation in any available drug court program.~~

The bill would make its provisions operative on January 1, 2016.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11357.5 of the Health and Safety Code
2 is amended to read:

3 11357.5. (a) Every person who sells, dispenses, distributes,
4 furnishes, administers, or gives, or offers to sell, dispense,
5 distribute, furnish, administer, or give, or possesses for sale any
6 synthetic cannabinoid compound, or any synthetic cannabinoid
7 derivative, to any person, is guilty of a misdemeanor punishable
8 by imprisonment in a county jail not exceeding six months, or by
9 a fine not exceeding one thousand dollars (\$1,000), or by both that
10 fine and imprisonment.

11 (b) As used in this section, the term “synthetic cannabinoid
12 compound” refers to any of the following substances:

13 (1) 1-pentyl-3-(1-naphthoyl)indole (JWH-018).

14 (2) 1-butyl-3-(1-naphthoyl)indole (JWH-073).

15 (3) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole
16 (JWH-200).

17 (4) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol
18 (CP-47,497).

19 (5) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol
20 (cannabicyclohexanol; CP-47,497 C8 homologue).

21 (c) This section shall remain in effect only until January 1, 2016,
22 and as of that date is repealed, unless a later enacted statute, that
23 is enacted before January 1, 2016, deletes or extends that date.

24 SEC. 2. Section 11357.5 is added to the Health and Safety
25 Code, to read:

26 11357.5. (a) Every person who sells, dispenses, distributes,
27 furnishes, administers, or gives, or offers to sell, dispense,
28 distribute, furnish, administer, or give, or possesses for sale any
29 synthetic cannabinoid compound, or any synthetic cannabinoid
30 derivative, to any person, is guilty of a misdemeanor punishable

1 by imprisonment in a county jail not to exceed six months, or by
2 a fine not to exceed one thousand dollars (\$1,000), or by both that
3 fine and imprisonment.

4 (b) (1) Every person who uses or possesses any synthetic
5 cannabinoid compound, or any synthetic cannabinoid derivative,
6 is guilty of a public offense punishable as follows:

7 ~~(A) A first offense is an infraction punishable by a fine not to~~
8 ~~exceed two hundred fifty dollars (\$250).~~

9 ~~(B) A second offense is an infraction punishable by a fine not~~
10 ~~to exceed two hundred fifty dollars (\$250) or a misdemeanor~~
11 ~~punishable by imprisonment in a county jail not to exceed six~~
12 ~~months, a fine not to exceed five hundred dollars (\$500), or by~~
13 ~~both that fine and imprisonment.~~

14 ~~(C) A third or subsequent offense is a misdemeanor punishable~~
15 ~~by imprisonment in a county jail not to exceed six months, or by~~
16 ~~a fine not to exceed one thousand dollars (\$1,000), or by both that~~
17 ~~fine and imprisonment.~~

18 (2) A defendant convicted of a violation of paragraph (1), may,
19 in his or her discretion, elect to participate in the education program
20 designed and implemented pursuant to paragraph (3). If that
21 election is made, execution of the sentence imposed pursuant to
22 paragraph (1) shall be stayed. Upon successful completion of the
23 education program, the case against the defendant shall be
24 dismissed.

25 (3) (A) The Luskin School of Public Affairs at the University
26 of California, Los Angeles is requested to design, or designate
27 another entity to design, an evidence-based education program
28 and treatment model for individuals convicted of a violation of
29 paragraph (1) ~~of subdivision (b)~~ or a violation of paragraph (1) of
30 subdivision (b) of Section 11375.5. If the university does not
31 comply with that request, the Judicial Council shall contract with
32 another entity to design that education program and treatment
33 model.

34 (B) Prior to implementing the education program and treatment
35 model designed pursuant to subparagraph (A), the Judicial Council
36 shall approve that education program and treatment model, upon
37 finding that courts can successfully implement it. During the
38 approval process, the Judicial Council may consult with the
39 Substance Use Disorder Services Divisions of the State Department
40 of Health Care Services.

(C) Upon approval of the education program and treatment model pursuant to subparagraph (B), the Judicial Council shall assist courts in obtaining educational materials required to implement, and in implementing, that education program and treatment model. During the implementation process, the Judicial Council may consult with the Substance Use Disorder Services Divisions of the State Department of Health Care Services.

~~(4) Notwithstanding any other law, a defendant convicted of a violation of paragraph (1) who was granted probation and required to participate in a drug treatment program pursuant to Section 1210.1 of the Penal Code, and who does not successfully complete that drug treatment program shall be presumed eligible for participation in any available drug court program.~~

(c) As used in this section, the term “synthetic cannabinoid compound” refers to any of the following substances:

- (1) 1-pentyl-3-(1-naphthoyl)indole (JWH-018).
- (2) 1-butyl-3-(1-naphthoyl)indole (JWH-073).
- (3) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200).
- (4) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497).
- (5) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol; CP-47,497 C8 homologue).

(d) This section shall become operative on January 1, 2016.

SEC. 3. Section 11375.5 of the Health and Safety Code is amended to read:

11375.5. (a) Every person who sells, dispenses, distributes, furnishes, administers, or gives, or offers to sell, dispense, distribute, furnish, administer, or give, any synthetic stimulant compound specified in subdivision (b), or any synthetic stimulant derivative, to any person, or who possesses that compound or derivative for sale, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

(b) Unless specifically excepted, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, or unless listed in another schedule, subdivision (a) applies to any material, compound, mixture, or preparation which contains any quantity of the following substances

1 having a stimulant effect on the central nervous system, including
2 its salts, isomers, esters, or ethers, and salts of isomers, esters, or
3 ethers whenever the existence of such salts, isomers, esters, or
4 ethers, and salts of isomers, esters, or ethers is possible within any
5 of the following specific chemical designations:

6 (1) Naphthylpyrovalerone whether or not further substituted in
7 the naphthyl ring to any extent with alkyl, alkoxy, alkylendioxy,
8 haloalkyl, or halide substituents, whether or not further substituted
9 in the naphthyl ring by one or more other univalent substituents,
10 or whether or not further substituted in the carbon chain at the 3-,
11 4-, or 5-position with an alkyl substituent.

12 (2) 2-amino-1-phenyl-1-propanone (cathinone) or variation in
13 any of the following ways:

14 (A) By substitution in the phenyl ring to any extent with alkyl,
15 alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether
16 or not further substituted in the phenyl ring by one or more other
17 univalent substituents.

18 (B) By substitution at the 3-position with an alkyl substituent.

19 (C) By substitution at the nitrogen atom with alkyl, dialkyl, or
20 benzyl groups, or by inclusion of the nitrogen atom in a cyclic
21 structure.

22 (c) This section shall not prohibit prosecution under any other
23 provision of law.

24 (d) This section shall remain in effect only until January 1, 2016,
25 and as of that date is repealed, unless a later enacted statute, that
26 is enacted before January 1, 2016, deletes or extends that date.

27 SEC. 4. Section 11375.5 is added to the Health and Safety
28 Code, to read:

29 11375.5. (a) Every person who sells, dispenses, distributes,
30 furnishes, administers, or gives, or offers to sell, dispense,
31 distribute, furnish, administer, or give, any synthetic stimulant
32 compound specified in subdivision (c), or any synthetic stimulant
33 derivative, to any person, or who possesses that compound or
34 derivative for sale, is guilty of a misdemeanor punishable by
35 imprisonment in a county jail not to exceed six months, or by a
36 fine not to exceed one thousand dollars (\$1,000), or by both that
37 fine and imprisonment.

38 (b) (1) Every person who uses or possesses any synthetic
39 stimulant compound specified in subdivision (c), or any synthetic

1 stimulant derivative, is guilty of a public offense punishable as
2 follows:

3 (A) ~~A first offense is an infraction punishable by a fine not to~~
4 ~~exceed two hundred fifty dollars (\$250).~~

5 (B) ~~A second offense is an infraction punishable by a fine not~~
6 ~~to exceed two hundred fifty dollars (\$250) or a misdemeanor~~
7 ~~punishable by imprisonment in a county jail not to exceed six~~
8 ~~months, a fine not to exceed five hundred dollars (\$500), or by~~
9 ~~both that fine and imprisonment.~~

10 (C) ~~A third or subsequent offense is a misdemeanor punishable~~
11 ~~by imprisonment in a county jail not to exceed six months, or by~~
12 ~~a fine not to exceed one thousand dollars (\$1,000), or by both that~~
13 ~~fine and imprisonment.~~

14 (2) A defendant convicted of a violation of paragraph (1) may,
15 in his or her discretion, elect to participate in the education program
16 designed and implemented pursuant to paragraph (3) of subdivision
17 (b) of Section 11357.5. If that election is made, execution of the
18 sentence imposed pursuant to paragraph (1) shall be stayed. Upon
19 successful completion of the education program, the case against
20 the defendant shall be dismissed.

21 (3) ~~Notwithstanding any other law, a defendant convicted of a~~
22 ~~violation of paragraph (1) who was granted probation and required~~
23 ~~to participate in a drug treatment program pursuant to Section~~
24 ~~1210.1 of the Penal Code, and who does not successfully complete~~
25 ~~that drug treatment program shall be presumed eligible for~~
26 ~~participation in any available drug court program.~~

27 (c) Unless specifically excepted, or contained within a
28 pharmaceutical product approved by the United States Food and
29 Drug Administration, or unless listed in another schedule,
30 subdivisions (a) and (b) apply to any material, compound, mixture,
31 or preparation which contains any quantity of the following
32 substances having a stimulant effect on the central nervous system,
33 including its salts, isomers, esters, or ethers, and salts of isomers,
34 esters, or ethers whenever the existence of such salts, isomers,
35 esters, or ethers, and salts of isomers, esters, or ethers is possible
36 within any of the following specific chemical designations:

37 (1) Naphthylpyrovalerone whether or not further substituted in
38 the naphthyl ring to any extent with alkyl, alkoxy, alkylendioxy,
39 haloalkyl, or halide substituents, whether or not further substituted
40 in the naphthyl ring by one or more other univalent substituents,

1 or whether or not further substituted in the carbon chain at the 3-,
2 4-, or 5-position with an alkyl substituent.

3 (2) 2-amino-1-phenyl-1-propanone (cathinone) or variation in
4 any of the following ways:

5 (A) By substitution in the phenyl ring to any extent with alkyl,
6 alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether
7 or not further substituted in the phenyl ring by one or more other
8 univalent substituents.

9 (B) By substitution at the 3-position with an alkyl substituent.

10 (C) By substitution at the nitrogen atom with alkyl, dialkyl, or
11 benzyl groups, or by inclusion of the nitrogen atom in a cyclic
12 structure.

13 (d) This section shall not prohibit prosecution under any other
14 provision of law.

15 (e) This section shall become operative on January 1, 2016.

16 SEC. 5. Section 1210 of the Penal Code is amended to read:

17 1210. As used in Sections 1210.1 and 3063.1 of this code, and
18 Division 10.8 (commencing with Section 11999.4) of the Health
19 and Safety Code, the following definitions apply:

20 (a) The term “nonviolent drug possession offense” means the
21 unlawful personal use, possession for personal use, or
22 transportation for personal use of any controlled substance
23 identified in Section 11054, 11055, 11056, 11057, or 11058 of the
24 Health and Safety Code, or the offense of being under the influence
25 of a controlled substance in violation of Section 11550 of the
26 Health and Safety Code. The term “nonviolent drug possession
27 offense” does not include the possession for sale, production, or
28 manufacturing of any controlled substance and does not include
29 violations of Section 4573.6 or 4573.8.

30 (b) The term “drug treatment program” or “drug treatment”
31 means a state licensed or certified community drug treatment
32 program, which may include one or more of the following: drug
33 education, outpatient services, narcotic replacement therapy,
34 residential treatment, detoxification services, and aftercare services.
35 The term “drug treatment program” or “drug treatment” includes
36 a drug treatment program operated under the direction of the
37 Veterans Health Administration of the Department of Veterans
38 Affairs or a program specified in Section 8001. That type of
39 program shall be eligible to provide drug treatment services without
40 regard to the licensing or certification provisions required by this

1 subdivision. The term “drug treatment program” or “drug
2 treatment” does not include drug treatment programs offered in a
3 prison or jail facility.

4 (c) The term “successful completion of treatment” means that
5 a defendant who has had drug treatment imposed as a condition
6 of probation has completed the prescribed course of drug treatment
7 as recommended by the treatment provider and ordered by the
8 court and, as a result, there is reasonable cause to believe that the
9 defendant will not abuse controlled substances in the future.
10 Completion of treatment shall not require cessation of narcotic
11 replacement therapy.

12 (d) The term “misdemeanor not related to the use of drugs”
13 means a misdemeanor that does not involve (1) the simple
14 possession or use of drugs or drug paraphernalia, being present
15 where drugs are used, or failure to register as a drug offender, or
16 (2) any activity similar to those listed in (1).

17 (e) This section shall remain in effect only until January 1, 2016,
18 and as of that date is repealed, unless a later enacted statute, that
19 is enacted before January 1, 2016, deletes or extends that date.

20 SEC. 6. Section 1210 is added to the Penal Code, to read:

21 1210. As used in Sections 1210.1 and 3063.1 of this code, and
22 Division 10.8 (commencing with Section 11999.4) of the Health
23 and Safety Code, the following definitions apply:

24 (a) The term “nonviolent drug possession offense” means the
25 unlawful personal use, possession for personal use, or
26 transportation for personal use of any controlled substance
27 identified in Section 11054, 11055, 11056, 11057, or 11058 of the
28 Health and Safety Code, the offense of being under the influence
29 of a controlled substance in violation of Section 11550 of the
30 Health and Safety Code, ~~the misdemeanor offense of using or~~
31 ~~possessing use or possession of~~ a synthetic cannabinoid compound
32 in violation of paragraph (1) of subdivision (b) of Section 11357.5
33 of the Health and Safety Code, or ~~the misdemeanor offense of~~
34 ~~using or possessing use or possession of~~ a synthetic stimulant
35 compound in violation of paragraph (1) of subdivision (b) of
36 Section 11375.5 of the Health and Safety Code. The term
37 “nonviolent drug possession offense” does not include the
38 possession for sale, production, or manufacturing of any controlled
39 substance and does not include violations of Section 4573.6 or
40 4573.8.

1 (b) The term “drug treatment program” or “drug treatment”
2 means a state licensed or certified community drug treatment
3 program, which may include one or more of the following: drug
4 education, outpatient services, narcotic replacement therapy,
5 residential treatment, detoxification services, and aftercare services.
6 The term “drug treatment program” or “drug treatment” includes
7 a drug treatment program operated under the direction of the
8 Veterans Health Administration of the Department of Veterans
9 Affairs or a program specified in Section 8001. That type of
10 program shall be eligible to provide drug treatment services without
11 regard to the licensing or certification provisions required by this
12 subdivision. The term “drug treatment program” or “drug
13 treatment” does not include drug treatment programs offered in a
14 prison or jail facility.

15 (c) The term “successful completion of treatment” means that
16 a defendant who has had drug treatment imposed as a condition
17 of probation has completed the prescribed course of drug treatment
18 as recommended by the treatment provider and ordered by the
19 court and, as a result, there is reasonable cause to believe that the
20 defendant will not abuse controlled substances in the future.
21 Completion of treatment shall not require cessation of narcotic
22 replacement therapy.

23 (d) The term “misdemeanor not related to the use of drugs”
24 means a misdemeanor that does not involve (1) the simple
25 possession or use of drugs or drug paraphernalia, being present
26 where drugs are used, or failure to register as a drug offender, or
27 (2) any activity similar to those listed above.

28 (e) This section shall become operative on January 1, 2016.

29 SEC. 7. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.